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HON. FREDERICK P. CORBIT

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

In re:  
GIGA WATT, INC.

CASE NO. 18-03197-FPC11

MOTION FOR RELIEF FROM STAY;  
ABANDONMENT; AND REJECTION OF  
UNEXPIRED COMMERCIAL LEASES

Debtor in Possession

Giga Plex, LLC and MLDC1, LLC, (“Creditors” or “Landlords”) by and through its counsel of record, as its motion from relief from stay, abandonment, and rejection of unexpired commercial leases under 11 U.S.C §§ 362, 365 & 554 (“Motion”), respectfully aver:

**I. JURISDICTION AND VENUE**

1.1 This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

**MOTION FOR RELIEF FROM STAY;  
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## II. FACTS

2.1 Giga Watt, Inc., Debtor in Possession (“Debtor”), commenced this case by filing a voluntary petition under chapter 11 of the Bankruptcy Code on November 19, 2018. At all times during commencement of its chapter 11 bankruptcy case Debtor was subject to a commercial leases with Creditors/Landlords.

2.2 Giga Plex, LLC, was scheduled by the Debtor as the holder of an unexpired executory contract [Leaseholder] on Schedule G, a secured creditor under Schedule D in the amount of \$16,264.28, Schedule F in the amount of \$39,200.00.

2.3 MLDC1, LLC, was scheduled by the Debtor as the holder of an unexpired executory contract [Leaseholder] on Schedule G and as an unsecured creditor for a total amount of \$107,041.19.

2.4 On October 16, 2018, Creditors and the Debtor entered into Amended and Restated Commercial Lease Agreements (hereinafter the “Leases”) pursuant to which the Debtor occupies the following parcels of property (the “Premises”):

- 7890 Randolph Road, Moses Lake, WA 98837 – Giga Plex, LLC
- 9221 Tyndall Road, Moses Lake, WA 98837 – Giga Plex, LLC
- Portion of 7906 Randolph Road, Moses Lake, WA 98837 – MLDC1, LLC

2.5 A true and correct copy of the Amended Lease Agreements are attached as Exhibit A to the Declaration of Ryan Oster in Support of the Motion for Relief from Stay and Abandonment.

2.6 Prior to the commencement of this chapter 11 case, the Debtor defaulted under the Leases for failure to pay rent.

**MOTION FOR RELIEF FROM STAY;  
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1           2.7     Paragraph 1(a)(viii) of the Leases require the Debtor to pay all maintenance,  
2     utilities and insurance coverage and assessments on the Premises. The Debtor is obligated  
3     pay all utilities within ten (10) days of Landlord's delivery.

4           2.8     As of December 7, 2018, Debtor is currently \$503,921.55 in arrears in its rent  
5     and utility payments. Declaration of Ryan Oster, ECF No. 66.

6           2.9     This Court entered an Interim Cash Collateral Order ("Order") on December  
7     17, 2018. ECF No. 53.

8           2.10    This Order *inter alia*, granted Creditors a replacement lien, allowed Creditors  
9     to apply the security deposit in its possession to pay for post-petition obligations, and detailed  
10    "all rents, electricity, and utility owed to Creditor will be paid on time in Debtor's ordinary  
11    course of business." ECF No. 53, pg. 8 at 22-024.

12           2.11    There are no other encumbrances on the Premises.

13           2.12    Three days later, a Motion to Authorize Interim and Final Orders Authorizing  
14     Debtor in Possession to (A) Incur Post-Petition Debt on an Emergency Basis Pending a Final  
15     Hearing and (b) Provide Security and Other Relief ("Motion to Authorize").

16           2.13    The Motion to Authorize was subsequently denied by this Court on December  
17     26, 2018, with leave to the Debtor in Possession to resubmit.

18           2.14    On December 13, 2018, Mr. Oster as agent for Giga Plex, LLC sent the  
19     December electricity invoices to Heather Mulhall. See Declaration of Ryan Oster in Support  
20     of Motion for Relief from Stay, Exhibit C. The total amount due for both parcels is  
21     \$101,925.82.

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**MOTION FOR RELIEF FROM STAY;  
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1           2.15 Pursuant to Paragraph 1(a)(viii) of the Leases the Debtor is obligated pay all  
2 utilities within ten (10) days of Landlord's delivery. Accordingly, this would be December  
3 23, 2018.

4           2.16 Further, Debtor is in violation of this Court's Interim Cash Collateral Order for  
5 failure to pay "all rents, electricity, and utility owed to Creditor will be paid on time in  
6 Debtor's ordinary course of business." ECF No. 53, pg. 8 at 22-024.

7           2.17 The power bills were due to be paid to Grant County PUD on December 31,  
8 2018. Creditors continue to be obligated on the utility bills and do not have the means to  
9 continue payment of the extensive power bills.

10           2.18 The Grant County PUD is expected to take further action to shut off the power  
11 to the Premises due to the Creditors' nonpayment of utilities resulting from the Debtor's  
12 nonpayment of its post-petition obligations.

13           2.19 Creditors are not adequately protected, Debtor does not do not have the ability  
14 to continue to make payments on the Premises during the pendency of the bankruptcy case.

15           2.20 The continuance of the automatic stay will cause irreparable harm to Creditor  
16 and will deprive Creditors of exercising its default remedies and rights under the Leases.

17           2.21 Based on the foregoing, cause exists to terminate or modify the automatic stay  
18 in accordance with 11 U.S.C. §362, to the end and effect that Creditors/Landlords may  
19 exercise its default rights and remedies under the Commercial Leases.

20           WHEREFORE, Creditors respectfully requests that this Court enter an order:  
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**MOTION FOR RELIEF FROM STAY;  
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1 i. Terminating the automatic stay as to the Premises in leased by the  
2 Debtor in Possession from Creditor and allowing Creditors to exercise its default rights and  
3 remedies under the Leases in accordance with applicable non-bankruptcy law;

4 ii. An order directing the Debtor in Possession to abandon the property of  
5 the estate;

6 iii. An order deeming the Commercial Leases rejected pursuant to Section  
7 365(a) of the Bankruptcy Code, effective at the entry of the Court's order granting this Motion;

8 iv. (b) An order preserving the Landlord's right to seek an administrative  
9 claim pursuant to 11 U.S.C. §§ 365(d)(3) and 503(b)(1)(A) for unpaid post-petition rent and  
10 charges;

11 v. An order waiving the fourteen (14) day stay pursuant to FRBP  
12 4001(a)(3); and

13 vi. For such other and further relief as this Court deems proper.  
14

15 DATED: January 3, 2019.  
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18 OVERCAST LAW OFFICES  
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20 /s/ David A. Kazemba  
21 David A. Kazemba, WSBA #48049  
22 Attorneys for Creditors, Giga Plex, LLC  
23 and MLDC1, LLC  
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**MOTION FOR RELIEF FROM STAY;  
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